Supreme Court, U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1974.

No. 74-1541

BERNARD WEINSTOCK ET AL.,
APPELLANTS,

v.

TOWN OF HULL ET AL.,
APPELLEES.

ON APPEAL FROM THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

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In the
Supreme Court of the United States.

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JURISDICTIONAL STATEMENT.

Appellants appeal from a final judgment entered April 9, 1975, in the Superior Court of the Commonwealth of Massachusetts after rescript from the Supreme Judicial Court which affirmed a decree previously entered in the Superior Court declaring a Massachusetts statute, General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, constitutional and not in violation of the Fourteenth Amendment to the Constitution of the United States. The appellants submit this statement pursuant to Rule 15 of the Supreme Court of the United States to show that this court has jurisdiction of this appeal and that the federal constitutional question presented is substantial.

Opinion Below.

The only reported opinion of the Supreme Judicial Court is reported in Mass. Adv. Sh. (1975) 531, and in 323 N.E. 2d 867. A copy of that opinion is attached hereto as Appendix A. A copy of the final judgment after rescript is attached hereto as Appendix B. A copy of the notice of appeal filed on April 23, 1975, in the Superior Court is attached hereto as Appendix C.

Jurisdiction.

A petition for a declaratory decree was brought under Massachusetts General Laws, c. 231A, in the Superior Court by the ten named plaintiffs for themselves and on behalf of all others similarly affected against the town of Hull and the assessors and collector of taxes of the town, seeking a decree that so much of the provisions of Massachusetts General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, which exempts a person's household furniture and effects from the local property tax, if that property is "used or commonly kept in or about the dwelling of which he is owner of record . . . *and which is the place of his domicile*" (emphasis supplied), is unconstitutional as being repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

As stated above, a final judgment after rescript sustaining the validity of that statute was dated April 4, 1975, and entered by the Superior Court on April 9, 1975, and notice of appeal to this court was filed in the Superior Court on April 23, 1975.

Jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, § 1257(2). The Supreme Judicial Court is the highest court of Massachusetts. The following decisions sustain jurisdiction of the Supreme Court to review the judgment on appeal:

WHYY, Inc. v. *Glassboro*, 393 U.S. 117 (1968).
Wheeling Steel Corp. v. *Glander*, 337 U.S. 562 (1949).
Hartford Steam Boiler Inspection & Insurance Co. v. *Harrison*, 301 U.S. 459 (1937).
Farmers Loan & Trust Company v. *Minnesota*, 280 U.S. 204 (1930).

Statute Involved.

The statute involved, General Laws, c. 59, § 5, cl. 20, as amended by St. 1972, c. 144, § 1, which the appellants contend is repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, provides an exemption of a person's household furniture and effects from the local property tax if that property is "used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile*" (emphasis supplied). The material portion of that statute is attached hereto as Appendix D.

Question Presented.

The single question presented by this appeal is whether the exemption from taxation of certain personal property in favor

of those persons who are domiciled within a municipality, while denying that exemption on the same classification of property to others who are merely temporarily resident therein but who are domiciled elsewhere, is unconstitutional as in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case.

This petition filed in the Superior Court by the ten named plaintiffs for themselves and all others similarly situated, against the town of Hull, its assessors and collector of taxes, was submitted for decision by the Superior Court on a case stated (R. p. 18).

Each of the petitioners is domiciled in various cities and towns in Massachusetts but not in the defendant town of Hull. Each owns his own home where domiciled. Each also owns a home in the defendant town which is occupied by him temporarily during the summer season each year. The household furniture and effects located in the summer homes are taxed each year and the petitioners are required to pay the tax. The same classification of personal property, that is, household furniture and effects, in the homes of those persons who are domiciled in the town is, by reason of the statute, entirely exempt from taxation. The town of Hull is also known as Nantasket Beach, a summer resort town. The plaintiffs are assessed a tax on the real estate owned by them in the town in which the household furniture is located at the same rate as the domiciliaries. There are approximately 1,300 persons who own their homes in the town and who reside there temporarily during the summer of each year but who are not domiciled therein. Each of these persons is assessed and pays the real

estate tax at the same rate as those who are domiciled there. These temporary or summer residents are all required to pay the personal property tax from which those domiciled in the town are exempt. The household furniture tax is based upon the valuation of the property at the same rate as the real estate tax which, during the year 1973, was $101 per $1,000 valuation and for the first six months of 1974 at the rate of $50.50 per $1,000 valuation. The tax rate is comprised of two items, the school rate and the general rate. For the calendar year 1973 the school rate was $45.92, and the general rate was $55.08 per $1,000 valuation. The federal constitutional question was raised in the Superior Court by an amendment to the petition by adding thereto the following: "Said statute is also in violation of the Fourteenth Amendment to the Constitution of the United States" (R. p. 14), and was considered and passed on by the trial judge. The Superior Court judge made findings, rulings, and order for decree (R. pp. 24-32), and a final decree was entered in that court on June 7, 1974. It recited that the exemption did not violate the Fourteenth Amendment (R. p. 33). From that final decree an appeal was taken by the appellants to the Appeals Court and, upon the allowance of an application for direct appellate review, the case was transmitted to the Supreme Judicial Court (see certification of Thomas Dorgan, Clerk of the Superior Court). The opinion of the Supreme Judicial Court declared the statute constitutional and affirmed the Superior Court decree (Appendix A). Thereafter, pursuant to the rescript from the Supreme Judicial Court, the Superior Court entered a final judgment on April 9, 1975, in accordance with the decree entered in the Superior Court (R. p. 39). This appeal followed (R. p. 40).

The Federal Constitutional Question Presented is Substantial.

The Massachusetts statute clearly discriminates for tax purposes between persons domiciled in a city or town and those merely temporarily residing there and who are domiciled elsewhere. The town of Hull is a beach resort. About 1,300 persons own their homes there, which they occupy during the summer season each year. Many more thousands of persons own their seasonal homes from the Berkshires in the western part of the state along the eastern coastline to Cape Cod and the offshore islands. Those persons are equally affected by the statute and are assessed a tax on their household furniture and effects annually. Considering that in Hull, with a year-round population of only about 10,500 (R. p. 20), the total value of furniture assessed under the statute against non-domiciliaries was $890,770 (R. p. 18), it is plain that in all other cities and towns in the state which are resort areas and in which second homes are owned containing the usual household furniture and effects, the taxes on this classification of property affect many thousands of persons and likely amount to millions of dollars. This tax is a recurring one annually. The seasonal home owners in all municipalities in the state are required to pay a very large sum of money each year as a tax on property from which the domiciliaries there are entirely exempt. This constitutes a substantial deprivation of property and an unequal application of the laws.

The opinion of the Supreme Judicial Court that "The classification of household furniture and effects into two groups, one subject to assessment and the other not, presents no substantial question of the denial of equal protection of the laws under the Constitution of the United States," is challenged by this appeal.

A few of the cases analogous to this one are:

Township of Hillsborough v. *Cromwell*, 326 U.S. 620 (1946), in which the court stated (p. 623) that:

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment."

Dunn v. *Blumstein*, 405 U.S. 330 (1972).
Williamson v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955).
County of Alameda v. *City and County of San Francisco*, 19 Cal. App. 3d 750 (1971).

The two categories — domiciliary and non-domiciliary — are treated differently for tax purposes, whereas their relationship to Massachusetts does not differ. The temporary resident is subject to more onerous and burdensome tax treatment and consequently is denied the equal protection of the laws.

This federal constitutional question affects many thousands of persons in Massachusetts, the amount of money involved is very substantial and this is a continuing assessment and tax year after year to which they are subject.

It is, therefore, submitted that the question involved in this case is substantial and requires plenary consideration, with briefs on the merits and oral argument, for resolution.

Respectfully submitted,

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Appendix A.

Supreme Judicial Court of Massachusetts.

BERNARD WEINSTOCK & others *vs.* TOWN OF HULL & others.[1]

WILKINS, J. The plaintiffs bring this bill for declaratory relief to challenge the constitutionality of that portion of G.L. c. 59, § 5, Twentieth, as amended through St. 1972, c. 144, § 1, which exempts a person's household furniture and effects from the local property tax, if that property is "used or commonly kept in or about the dwelling of which he is [the] owner of record or for the use of which he is obligated to pay rent, *and which is the place of his domicile*" (emphasis supplied).

The plaintiffs are residents of the Commonwealth who are domiciled in municipalities other than Hull. Each plaintiff owns a dwelling in Hull where he or she resides temporarily during the summer season. The assessors have assessed the plaintiffs' household furniture and effects in their summer homes in Hull, and each plaintiff has received a personal property tax bill issued by the collector of taxes for the year 1973 and for the first six months of 1974. The parties agree that an actual controversy exists concerning the constitutionality of G.L. c. 59, § 5, Twentieth, as applied to the plaintiffs' household furniture and effects assessed by the town.

This matter was heard in the Superior Court on a case stated. The judge rejected the plaintiffs' assertion that an exemption from local taxation of household furniture and effects only if they are kept in a dwelling which is a person's

[1] The defendants in addition to the town of Hull are the assessors and the collector of taxes.

domicil violates art. 4 of Part II, c. 1, § 1, of the Constitution of the Commonwealth and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The plaintiffs appeal.[2] We turn first to a consideration of the plaintiffs' challenge based on provisions of the Constitution of the Commonwealth.

The plaintiffs claim that the requirement of Part II, c. 1, § 1, art. 4, that "assessments, rates, and taxes" must be "proportional and reasonable" invalidates a local personal property tax which distinguishes between household furniture and effects owned by a resident of a municipality and similar property owned by a nonresident of that municipality. The plaintiffs also rely on art. 10 of our Declaration of Rights.

We have observed that a literal interpretation of the Constitution "might lead to the invalidation of all exemptions." *Newhall* v. *Assessors of Brookline*, 329 Mass. 100, 103 (1952). See *Opinion of the Justices*, 324 Mass. 724, 730 (1949). Our cases have recognized, however, the right of the Legislature to grant exemptions which have a reasonable relationship to the constitutional purpose of equality and proportionality, although lacking mathematical precision. See *Opinion of the Justices*, 195 Mass. 607, 609 (1908). Thus an exemption from local personal property taxation of all household furniture,

[2] The final decree declared that the exemption of G.L. c. 59, § 5, Twentieth, did not violate Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution or the Fourteenth Amendment to the Constitution of the United States. It declared additionally that the assessment and tax on the plaintiffs' household furniture and effects were legal and that the statutory distinction between domiciliaries and nondomiciliaries was neither discriminatory nor unconstitutional.

We agree with the trial judge's conclusion that this is an appropriate occasion for declaratory relief. Similar relief has been granted in cases challenging the constitutionality of tax statutes. See cases cited in *East Chop Tennis Club* v. *Massachusetts Commn. Against Discrimination*, Mass. , - (1973) (Mass. Adv. Sh. [1973] 1611, 1616-1617).

wherever situated, to a value of $1,000 has been sustained. *Day* v. *Lawrence*, 167 Mass. 371 (1897). An increase in that exemption to $5,000 was upheld in *Newhall* v. *Assessors of Brookline*, 329 Mass. 100 (1952).[3] Where, however, an exemption has "been such as materially to impair the constitutional principle of proportional taxation of property," the exemption has been said to violate the constitutional requirement of proportionality. *Opinion of the Justices*, 324 Mass. 724, 733, (1949) (a five-year exemption for newly constructed residential buildings said to be bad). *Opinion of the Justices*, 344 Mass. 766 (1962) (a $5,000 exemption from assessment of real estate owned by a resident of the Commonwealth and occupied as his domicil said to be violative of Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution and art. 10 of the Declaration of Rights, because it would discriminate against rent payers, the owners of rental properties and others).

We regard the operation of G.L. c. 59, § 5, Twentieth, in its distinction between household furniture and effects kept in or near a person's domicil, and those that are not, as reasonable and not productive of unconstitutional disproportionality. Each plaintiff, and every other individual who has household furniture and effects in a dwelling which he owns or rents, is entitled to the exemption from local property taxes on that property, if the dwelling is his place of domicil. In this respect there is equality of treatment among all potential taxpayers. The loss of that advantage in the municipality where a person has a vacation home presents no greater prospect of disproportionality of taxation than the exemption itself or some dollar limit on the exemption, both of which we have upheld.

The classification of household furniture and effects into two groups, one subject to assessment and the other not, presents

[3] By the time of the *Newhall* case, the exemption for household furniture and effects was extended to such property only if it were situated in the place of the owner's domicil. This limitation was adopted in 1918. See St. 1918, c. 42, § 1, amending St. 1909, c. 490, Part I, § 5, Eleventh, a predecessor of G.L. c. 59, § 5, Twentieth. It has been continued since then.

no substantial question of the denial of equal protection of the laws under the Constitution of the United States. Any distinction in a tax statute which has a rational basis will survive a challenge under the equal protection clause. See *Frost* v. *Commissioner of Corps. & Taxn.* Mass. , - (1973),[a] app. dism. for want of substantial Federal question, 414 U.S. 803 (1973); *Carmichael* v. *Southern Coal & Coke Co.* 301 U.S. 495, 509 (1937); *San Antonio Independent Sch. Dist.* v. *Rodriguez,* 411 U.S. 1, 40-41 (1973); *Kahn* v. *Shevin,* 416 U.S. 351, 355-356 (1974). Certainly a tax applicable to household furniture and effects located in a summer residence, but not applicable to such property located in one's domicil, has a rational foundation.

Decree affirmed.

[a] Mass. Adv. Sh. (1973) 389, 399-401.

Appendix B.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT
No. 98090 EQ.

BERNARD WEINSTOCK ET AL.,
v.
TOWN OF HULL ET AL.

FINAL JUDGMENT AFTER RESCRIPT.

This cause came on to be heard upon a motion for the entry of a final judgment after rescript from the Supreme Judicial Court, and thereupon, upon consideration thereof, it is hereby ordered that the following final judgment be entered:

1. The exemption of G.L. c. 59, § 5, cl. 20 does not violate part 2, c. 1, § 1, Art. 4 of the Massachusetts Constitution.

2. The aforesaid exemption does not violate the Fourteenth Amendment of the Constitution of the United States.

3. Assessment made by the respondent assessors on the household furniture and effects of the petitioners and the tax levied thereon are legal.

4. So much of the statute (G.L. c. 59, § 5) as permits or requires the assessment and taxation of the personal property to the petitioners while exempting from taxation those who are domiciled in the Town of Hull on

the same classification of property is neither discriminatory nor unconstitutional.

By the Court (McNaught, J.)
MICHAEL J. DONOVAN,
Assistant Clerk.

Entered April 4, 1975

Assented to as to form only

Frank G. Lichtenstein
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Boston, MA 02108
523-3046
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Appendix C.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. SUPERIOR COURT
No. 98090 EQ.

BERNARD WEINSTOCK ET AL.
v.
TOWN OF HULL ET AL.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES.

[Filed April 23, 1975.]

Notice is hereby given that the plaintiffs, Bernard Weinstock, et al, hereby appeal to the Supreme Court of the United States from the final judgment entered in this court on April 9, 1975, after rescript from the Supreme Judicial Court of Massachusetts which declared that Mass. General Laws c. 59, s. 5, cl. 20, exempting from taxation persons domiciled in the defendant town of Hull on their household furniture and effects located in the town while at the same time taxing others who are not so domiciled but who have temporary residences there during the summer of each year and who own property of the same type and classification, is constitutional and not in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

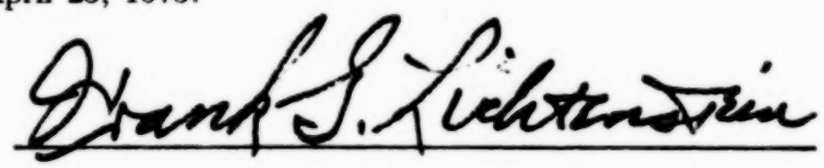
This appeal is taken pursuant to 28 U.S.C.A. s. 1257(2).

The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the record on appeal to the Supreme Judicial Court, the rescript issued by

the Supreme Judicial Court, the final judgment after rescript, and this notice of appeal.

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I, FRANK G. LICHTENSTEIN, attorney for the plaintiffs, and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the provisions of Rules 10 and 33 of the Supreme Court of the United States, I served a copy of the foregoing Notice of Appeal to The Supreme Court of the United States, on the Hon. Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, by mailing the same to the State House, Boston, Massachusetts, and on Haskell A. Lampke, Esq., attorney for defendants, by mailing the same to his office address at 85 State Street, Boston, Massachusetts, both being so mailed by prepaid postage on April 23, 1975.



Frank G. Lichtenstein

Appendix D.

MASSACHUSETTS GENERAL LAWS C. 59, § 5, CL. 20, AS AMENDED BY ST. 1972, C. 144, § 1

Certain Property and Polls Exempted.

The following property shall be exempt from taxation. . . . The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hundred and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile. . . .